D.B. CIVIL SPECIAL APPEAL NO.3/2007
The Director,Central State Farm, Jetsar **Vs.** Ram Agya & Anr.

Date : 15.5.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. Sanjeev Johari for the appellant.
Mr. G.R. Punia for the respondent.

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Having heard learned counsel for the parties we deem it just and appropriate to dispose of this appeal with following directions:-

The appellant had challenged the order passed by the Payment of Wages Authority, Ganganagar on 1st August, 1992 ex-parte and rejection of its review application for recalling said order. The appellant had made an application that their lawyer could not appear for sufficient cause on 25.6.1992 the first date of hearing mentioned in the notice inasmuch as it was his father's death anniversary and as a result of his absence the proceedings were ordered to proceed ex-parte. Thereafter by recording statement of one of the witnesses of the applicant on 16.7.1992 evidence was closed and order was passed on 1st August, 1992 by accepting the claim of the appellant that the appellant has illegally deducted the wages of 90 days of earned leave and imposed compensation of

twice the said amount.

This chain of event is not in dispute.

We find that only on 13.5.1992, the application was moved by the respondent Union and 25.6.1992 was the first date of notice. The facts stated by the appellant about the cause for non-appearance was not in dispute and on that very date the order to proceed ex-parte was made and thereafter the order was passed in the aforesaid manner. Apparently the Payment of Wages Authority has proceeded in the matter post haste without giving a reasonable opportunity to the employer even to explain his case.

Apparently, the order dated 1st August, 1992 suffers from the basic violation of the principles of natural justice of denying the adequate opportunity of hearing to the appellant before passing any order adverse to their interest.

In these circumstances, dismissal of the writ petition by the learned Single Judge on the basis of availability of alternative remedy by way of appeal on merit which in the aforesaid facts and circumstances would have been futile inasmuch as the order of proceeding ex-parte was recalled for which the appellants

had already approached the officer concerned.

It is well settled that where the order has been passed in breach of principles of natural justice, ordinarily the availability of alternative remedy is not to be held against the exercise of extra-ordinary jurisdiction. Present is one such case.

Accordingly, the appeal is allowed. The judgment under appeal is set aside. For the reasons aforesaid, the writ petition is also allowed. The order Annex.3 is set aside and the Payment of Wages Authority is directed to decide the application afresh in accordance with law after affording opportunity of hearing to the appellants.

Both the parties are directed to appear before the authority on 18th June, 2007. The application filed on behalf of the respondent workman may be decided as far as possible within a period of 3 months.

It is further made clear that the principal amount which was directed to be deposited by this Court with the Payment of Wages Authority while issuing notice on 8.1.2007 shall not be disbursed until final decision of the application but the same amount

shall be deposited in fixed deposit with a nationalized bank for a period of 4 months in the first instance and be further renewed until the decision of the application.

No order as to costs.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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